

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

AMBROSIO GARCIA-COMACHO	§	
VS.	§	CIVIL ACTION NO. 5:06cv1
C. MALDONADO, JR., ET AL.	§	

ORDER

Plaintiff Ambrosio Garcia-Comacho, an inmate previously confined at F.C.I. Texarkana, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 28 U.S.C. §§ 1331-1332 and in the nature of a claim under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). The complaint was referred to United States Magistrate Judge Caroline M. Craven for findings of fact, conclusions of law and recommendations for the disposition of the lawsuit. On May 15, 2006, the complaint was dismissed pursuant to 28 U.S.C. § 1915A(b)(1). On August 3, 2007, the Fifth Circuit held that the Plaintiff's allegations against Officer Washington, if accepted as true, were sufficient to avoid dismissal for failure to state a claim upon which relief may be granted. The dismissal of the Plaintiff's deliberate indifference claim against Officer Washington was vacated for further proceedings. On remand, Officer Washington filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted. On June 4, 2008, Magistrate Judge Craven issued a Report and Recommendation concluding that the Plaintiff had alleged facts sufficient to state a deliberate indifference claim and that the motion to dismiss should be denied. The Defendant has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having

made a *de novo* review of the objections raised by the Defendant to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Defendant are without merit. The Report and Recommendation correctly noted that the Supreme Court recently held that on a “motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007). The Supreme Court went on to criticize the lower court’s departure from the liberal pleading standards that must be accorded to *pro se* prisoners. *Id.* In his objections, Officer Washington appropriately noted problems in the Plaintiff’s pleadings; nonetheless, accepting all of the Plaintiff’s factual allegations as true, he has alleged facts sufficient to state a deliberate indifference claim. The motion to dismiss should be denied. Officer Washington may be able to show on summary judgment that the case should be dismissed, but the Plaintiff has alleged facts sufficient to avoid dismissal pursuant to Rule 12(b)(6). Therefore the findings and conclusions of the Magistrate Judge are adopted as the findings and conclusions of the Court. It is accordingly

ORDERED that Defendant Terrence Washington’s motion to dismiss (docket entry #47) is **DENIED**.

SIGNED this 23rd day of June, 2008.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE